

SAN DIEGO COUNTY AIRPORTS LEASING POLICY AND PROCEDURE

Policy

The leasing of County Airport land is regulated and influenced by Local, State, and Federal law including, but not limited to, the policies of the Federal Aviation Administration (FAA), the County Administrative Code, formal Policies adopted by the County Board of Supervisors (Board), input from community advisory committees, and by past decisions of the Board.

Authority to Lease

All leases in excess of ten years and leases where the rent exceeds \$10,000 per month require the approval of the Board of Supervisors. The Board must also approve all amendments to such leases. The Board grants certain authority over leases to the Director, Department of General Services (Lease Administrator). This delegated authority includes the approval of leases for terms not exceeding ten years and where the rent does not exceed \$10,000 per month. The Lease Administrator may also consent to lease assignments, financial encumbrances, and subleases, except where extraordinary circumstances may warrant review and approval by the Board. The Airports Director may consent to short-term airport use permits, where the term does not exceed one year.

Land Uses

Master Plans, Airport Layout Plans, and/or community plan documents, in conjunction with environmental impact report documents, have been developed and are periodically updated for all County Airports. These are reviewed and approved by the FAA, the Airport Land Use Commission, local cities having jurisdiction, and the Board, following a public review and input process. These documents then serve to guide Airports staff and the Board in making land use leasing decisions. The lease documents (described in more detail, below) specify the allowed uses of airport land and any land use restrictions that may apply.

Competitive Lease Proposals

It is generally the County's policy to solicit competitive proposals whenever a County property is available for lease to private parties. County Airports property may however, be leased without seeking competitive proposals when it is in the best interest of Airports, such as when supporting community aviation needs. In practice, this is usually done only when there is a surplus of airport land available for lease, and when not more than one party has expressed an interest in leasing a particular parcel of land. In some instances, lessees leasing land, which adjoins a vacant parcel, may be given the first opportunity to lease the adjoining parcel.

Length of Lease Term

To allow the County the greatest flexibility in making land use decisions over time, lease

terms are generally limited to the shortest term possible. When necessary, fixed-term leases are granted for the minimum number of years adequate to allow a lessee to amortize, and receive a reasonable return on, the lessee's investment in leasehold improvements. Historically, Airports has granted one year of lease term for each \$5,000 invested per acre of leased land, with a maximum term for aviation leases set at 30 years. Accordingly, to qualify for a thirty-year term on a 5-acre parcel, a lessee would have to invest \$750,000 in approved leasehold improvements ($\$5,000 \times 5 \text{ acres} \times 30 \text{ years} = \$750,000$). Leases where there is no investment by the lessee are usually kept on a month-to-month basis. The \$5,000 per acre per year formula for determining the length of lease term is a minimum requirement. Virtually all new projects constructed on County aviation land within the past ten years have exceeded this minimum investment requirement. Airports' industrial land leases typically have the same minimum investment requirements, at \$5,000 per acre per year, with a maximum lease term of 55 years. Lease terms for other non-aviation use properties may have different investment requirements and longer or shorter lease terms available to conform to common industry practices.

Fair Market Rental

It is a policy of the Board of Supervisors, and a requirement of the FAA, that County Airports receive fair market value when leasing its airport land. Achieving fair market value usually starts with an appraisal requisitioned by Airports, followed by negotiations between Airports staff and the lessee, or prospective lessee, to reach agreement. The County typically negotiates for a rental based on a 9% return on the appraised value of the land. Restaurants, hotels, golf driving ranges, and certain other land uses, usually result in rentals based on a percentage of the lessee's gross income, as this is customary for such leases. Leases with a term exceeding ten years in length shall provide for renegotiation of rent to market level at appropriate intervals in keeping with industry standards. Interim cost-of-living adjustments shall also be provided at appropriate intervals in keeping with industry standards.

Lease Contracts and Legal Review

County lease contracts are intended to transfer to the lessee the liabilities associated with possession and control of real property, including compliance with all federal, state and local laws and regulations, including those pertaining to the use, storage and disposal of hazardous materials. All County leases shall be written on a form approved by County Counsel and shall, at a minimum, conform to local/regional standards of tenant responsibility and liability. County leases may contain more restrictive clauses than private sector leases to better protect the public interest. County leases shall include strict provisions for complying with all laws, particularly environmental laws such as hazardous materials management and stormwater pollution prevention regulations. Lease language is periodically updated to reflect changes in real estate law and to meet changing economic and other risks associated with the ownership of land. During the term of a lease, lease amendments may be agreed to between the parties to effect changes to the rent or other economic lease provisions, or to update antiquated lease language which no longer protects one or both of the parties as originally intended.

Construction of Leasehold Improvements

County Airport leases typically require the construction of leasehold improvements, which will be owned by the lessee during the term of their lease and which will revert to the ownership of the County at the end of the lease term. Height restrictions, lot-line set backs, parking requirements, building design, quality of construction, and other requirements are controlled by the County Airports Development Standards and by County or city building code requirements. Performance bonds may be required when, in the opinion of the County, it is prudent to guarantee the timely construction of required leasehold improvements.

New 30-Year Leases For Existing Tenants and Equity

A lease extension may be granted to a tenant who has fully complied with all terms and conditions of the lease if granting an extension would be in the best interests of the County. Existing tenants may submit a request for a new 30-year lease at any point during their lease. The County is not obligated to accept such a request, but will consider all proposals, evaluating them in light of the following criteria:

- Existing/proposed use must be consistent with Airport Layout Plan, Master Plan, and other relevant land use planning documents.
- County must determine that there is no immediate need for the land after the current lease expires.
- Lessee must be in good standing (i.e., compliant with existing lease terms).
- New capital investment shall apply, if appropriate, to qualify for term in excess of current termination date at current standard (see "Length of Lease Term" above).
- County shall determine whether or not the public interest would be better served by allowing the lease to expire so that potential new tenants may participate in a new competitive solicitation process.

It is the practice of County Airports to negotiate lease extensions when it is in the best interests of the aviation community or when a surplus of land is available for lease and there has been no written notice of interest by third parties in bidding on the particular parcel of land covered by the expiring lease. The County requires that any leases for additional term be on the County current standard lease form. County staff's acceptance/negotiation is subject to Board of Supervisors approval.

Typically, all County Airports leases provide that at the end of the lease the improvements will become the property of the County regardless of who originally installed the improvements. If a lease is extended prior to the expiration of its term, the County requires payment for the present value of its reversionary interest in the leasehold improvements. This interest is referred to as Equity. The amount of equity is based on appraising the value of the improvements as of the end of the lease, and discounting that value to a present value. A variety of appraisal techniques may be used, and negotiation may ultimately be involved to arrive at a value acceptable to both the County and the lessee. The County will permit an amortization of the equity it is owed, with interest, over a period of months not to exceed approximately 50% of the extended lease term. The purchase of the County's equity interest by the lessee, whether by cash payment or amortization, may be counted as part of the investment

requirement in establishing the length of extended term, as discussed above under “Length of Lease Term”.

Procedure for Granting a New Lease to an Existing Lessee for a Longer Term

At times, part way through an existing lease, a Lessee will express interest in constructing new capital improvements in exchange for a new 30 year lease. This can be in the County’s best interest because: (1) it provides for new and improved aviation and/or industrial facilities earlier than if Airports was to wait until the lease terminates; (2) it prevents deferred maintenance which can be common in the final years of a long term lease; and (3) it allows a successful business to continue on at the airport. The term for aviation leases is never longer than 30 years and Industrial leases are typically granted for a term of 55 years.

1. County receives a written request from Lessee, proposing a new lease.
2. County staff reviews Lessee’s proposal to determine if:
 - Lessee is in good standing and provides a valuable service to the local aviation and/or business community.
 - The existing or proposed use is appropriate and consistent with the Airport Layout Plan, Master Plan, and any other relevant land use planning documents.
 - Written Notice of Interest by other parties to bid on this premises have been received by County. If so, the written records are to be filed and tabbed under the legal documents section of lease file.
 - County has no need for this area for airside needs upon the termination of the existing lease.
3. The public is informed that the County is entering in negotiations to extend the term of the lease by placing it on the agenda for the appropriate Advisory Committee (for example Gillespie Field Development Council, Palomar Airport Advisory Committee, or Fallbrook Advisory Committee). The agendas are posted publicly and placed on County Airports’ website following Brown Act Guidelines. There is public notice of all items on the agenda and public comment on any item is accepted upon request.
4. If the proposed lease is for an Airport not represented by an advisory council, the County will issue a public notice advertisement in a local paper and place the item on County Airports’ website. Direction for supplying written comment will be included and considered by the County. Any such comment will become part of the permanent record.
5. If it is determined that it is appropriate to enter into a new lease, County Staff will draft a written proposal to Lessee, subject to Board approval. This proposal will detail the required Capital Improvement Requirements and the Equity Payment to be paid to County for postponement of County’s reversionary interest in the property. The new lease will be drafted on the current Standard Lease Form.

6. Upon acceptance by Lessee, the proposal is placed on the agenda for the appropriate Advisory committee, if applicable, for a second time. There is public notice of all items on the agenda and public comment on any item is accepted upon request.
7. The Lease is then drafted, signed and docketed on the Agenda of the County Board of Supervisors. There is public notice of all items on the Board Agenda and public comment on any item is accepted upon request.